

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CENTURY FAST FOODS, INC.

and

Case 31-CA-116102

WILLIAM LUJAN

NOTICE TO SHOW CAUSE

On January 20, 2016, the Board issued a Decision and Order finding that the Respondent violated Section 8(a)(1) of the Act by: (1) maintaining and enforcing an Agreement to Arbitrate (Agreement) that requires employees, as a condition of employment, to waive their right to file class or collective actions in all forums; (2) maintaining an Agreement that leads employees to reasonably believe that they barred or restricted from filing charges with the Board; and (3) maintaining an Agreement that requires employees to keep confidential any arbitration proceedings undertaken under the Agreement. 363 NLRB No. 97. On June 29, 2018, the United States Court of Appeals for the Ninth Circuit issued an Order, in light of *Epic Systems Corp. v. Lewis*, 585 U.S. ___, 138 S. Ct. 1612 (2018), vacating the Board's first finding, and remanding findings (2) and (3) to the Board.

At the time of the Board's decision, and Administrative Law Judge Ariel L. Sotolongo's decision, issue (2), whether maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did, was resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that held an employer's maintenance of a facially neutral work rule would be unlawful "if employees would reasonably construe the

language to prohibit Section 7 activity.” Id. at 647. Issue (3), whether the Agreement’s confidentiality requirement violated Section 8(a)(1), was similarly analyzed under *Lutheran Heritage*. 363 NLRB No. 97, slip op. at 1 fn. 4.¹ Recently, the Board overruled the *Lutheran Heritage* “reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this case should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

NOTICE IS GIVEN that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before November 13, 2018 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., October 29, 2018.

By direction of the Board:

/s/ Roxanne L. Rothschild

Executive Secretary

¹ The Board found the confidentiality requirement unlawful under *Lutheran Heritage*’s prong one “reasonably construed” analysis, and also under prong three because the rule was unlawfully applied to restrict employees’ Sec. 7 rights.